

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

J. DOE 4, *et al.*,

Plaintiffs,

v.

ELON MUSK, *et al.*,

Defendants.

Civil Action No. 25-462-TDC

**MOTION OF CONSTITUTIONAL ACCOUNTABILITY CENTER  
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN  
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

*Amicus curiae* Constitutional Accountability Center respectfully moves for leave to file the attached brief in opposition to Defendants' Motion to Dismiss. In support of this motion, *amicus* states:

1. Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works to improve understanding of the Constitution and accordingly has an interest in this case.

2. CAC has filed *amicus* briefs in courts across the country, including the Supreme Court, addressing the text, history, and operation of Article II's Appointments Clause. *See, e.g.*, Brief of Constitutional Accountability Center as *Amicus Curiae* in Support of Appellants, *United States ex rel. Zafirov v. Florida Med. Assocs., LLC*, Nos. 24-13581 & 24-13583 (11th Cir. filed Jan. 15, 2025); Brief of Constitutional and Administrative Law Scholars as *Amici Curiae* in Support of Affirmance, *Lucia v. SEC*, No. 17-130 (U.S. filed Apr. 2, 2018). CAC has also brought an Appointments Clause challenge to an officer who was serving unlawfully. *See* Complaint,

*Blumenthal v. Whitaker*, No. 18-cv-2664 (D.D.C. filed Nov. 19, 2018). Accordingly, CAC has developed expertise relevant to the Appointments Clause’s requirement that all offices of the United States be “established by Law,” and its proposed brief provides a unique historical perspective and more detail on this novel issue than the parties can provide.

3. There is no Federal Rule of Civil Procedure that governs motions for leave to file an *amicus* brief in a federal district court, but district courts have broad discretion to permit *amicus* briefs. *Am. Humanist Ass’n v. Md.-Nat’l Capital Park & Plan. Comm’n*, 303 F.R.D. 266, 269 (D. Md. 2014); *see* D. Md. L.R. 12. Typically, *amicus* briefs have been “allowed at the trial level where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance.” *Bryant v. Better Bus. Bureau of Greater Md., Inc.*, 923 F. Supp. 720, 727 (D. Md. 1996) (citing *Waste Mgmt. of Pa., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995)). *Amicus* briefs may also “assist the Court in reaching the right decision in a case affected with the interest of the general public.” *Russell v. Bd. of Plumbing Exam’rs*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999).

4. The proposed attached *amicus* brief meets these standards. Given the novelty of President Trump’s double-pronged assault on the Appointments Clause, analysis of the Clause’s requirement that offices be “established by Law,” as a matter of first principles, will aid this Court in deciding Defendants’ Motion to Dismiss. The proposed brief provides that analysis, drawing on constitutional text, structure, and history to demonstrate that Musk’s failure to occupy an office “established by Law” is not a *defense* to Plaintiffs’ Appointments Clause claim but a substantive *violation* of the Appointments Clause—separate and apart from the fact that Musk was not appointed in accordance with the procedures mandated by that Clause.

5. No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

6. All parties consent to the filing of this brief.

For the foregoing reasons, leave to file the attached *amicus curiae* brief should be granted.

A proposed order is attached to this motion.

Respectfully submitted,

Dated: May 15, 2025

/s/ Miriam Becker-Cohen  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2025, the foregoing document and all attachments were filed with the Clerk of the Court, using the CM/ECF system, causing them to be served on all parties.

Dated: May 15, 2025

/s/ Miriam Becker-Cohen  
Miriam Becker-Cohen

*Counsel for Amicus Curiae*